

**Commonwealth of Massachusetts
Before the
Department of Telecommunications and Energy**

**Investigation by the Department of Telecommunications and Energy
on its own motion as to the propriety of the rates and charges
set forth in the following tariff: M.D.T.E. No. 10, filed on February 3, 2006
to become effective March 5, 2006, by Verizon New England, Inc.,
d/b/a/ Verizon Massachusetts**

Case No. D.T.E. 06-26

COMMENTS OF ABCD, INC.

COMES NOW, Action for Boston Community Development, Inc. (ABCD), by and through its undersigned representative, and for its comments in the above-captioned proceeding states as follows:

1. ABCD is a private non-profit human services agency providing opportunities for upward mobility to hundreds of thousands of Greater Boston residents through innovative, quality programs and services. ABCD was incorporated in 1962, prior to the national War on Poverty, as a "Gray Areas Project," one of several initiatives across the nation that recruited people from all sectors of the community to come together to plan and implement programs to combat poverty. In Boston this project was funded with an initial annual \$2 million grant from the Ford Foundation and funding from several other sources including the Permanent Charity Fund. Then, with the passage of the Economic Opportunity Act in 1964 and the birth of the War on Poverty, ABCD was designated Boston's antipoverty agency by the federal government, the Commonwealth of Massachusetts and the City of Boston.
2. Today, as the largest independent, private, 501(c)3 non-profit human services agency in New England, ABCD assists more than 100,000 low-income individuals and families annually. ABCD serves low-income residents through its central office and a decentralized, neighborhood-based, city-wide network of Area Planning Action Councils (APACs), Neighborhood Service Centers (NSCs), Head Start and Child Care Centers, and many other neighborhood programs, with neighborhood residents from all over the city making up the majority of board members.
3. ABCD opposes the proposed Verizon late payment charge for residential telecommunications service. ABCD's opposition is based on the following four grounds:

- Seeking to justify the proposed late payment fee as a means to compensate Verizon (sometimes referred to as the Company) for the cost of money associated with late payments is unreasonable;
- Seeking to justify the proposed late payment fee as a means to compensate Verizon for its cost of collection activities is unreasonable;
- Seeking to justify the proposed late payment fee as an “incentive to pay” is unreasonable; and
- Seeking to justify the proposed late payment fee through comparisons to the late charges of other commercial businesses is unreasonable.

Each of these observations is explored in greater detail below.

Seeking to justify the proposed late payment fee as a means to compensate Verizon for the cost of money associated with late payments is unreasonable.

3. Some utilities seek to justify late payment charges as a means to gain compensation for the carrying costs of late payments. Carrying charges associated with late payments will show up in Verizon’s working capital requirement. If, in other words, Verizon immediately needs the revenue that has been billed but not collected, it will need to borrow debt to acquire that revenue. The carrying cost of that debt will appear as a cost-of-capital requirement for the company.
4. Any effort by Verizon to justify its proposed late payment charge as a mechanism through which to be compensated for the carrying costs of money faces an immediate fundamental flaw. To set an arbitrary date on which the Company will begin to impose a 1.5% per month carrying cost has no rational basis. The carrying costs of money do not begin on the day after a residential bill is due. A customer that pays one day “late” does not impose significantly higher carrying costs on Verizon than a customer that pays one day “early.”
5. Even if one accepts, solely *arguendo*, that uncompensated carrying costs begin on the day after a billing due date,¹ a monthly late payment charge of 1.5% is not necessary to compensate Verizon for those carrying costs. It is important to note that Verizon’s

¹ Carrying costs, of course, are the result of a complex calculation of lead days and lag days. To assert that a late fee is needed to compensate the Company for carrying costs after the due date is to posit that no lag days occurring after the due date have been included in the most recent lead/lag study. That is a questionable proposition at best.

February 3, 2006 statement reports that while 85% of residential bills were paid on or before the due date, “approximately 10% of Verizon MA’s residence customer bills were paid one month late.” In fact, this statement is not precisely correct. It would be more accurate to say that 10% of the residence customer bills are paid after the due date for the bill but before the due date for the next bill. It is unreasonable to assume that everyone that pays in the month after the due date pays on the last day of the month after the due date.

6. A simple model shows the extent of the overcharge by Verizon’s proposal. Assume, for purposes of analysis, that Verizon has 300 residential customers each of who has a monthly Verizon bill of \$100. Assume further that an equal number of customers make their monthly bill payments on each day of the month relative to the due date (*i.e.*, 1/30th of all the customers make a payment each day). As reported by Verizon, 85% of the residential customers (255) pay in the month before the due date. In addition, 10% of the residential customers (30) pay after the first due date, but before the second due date. Again, an equal number of the late-paying customers are assumed to pay each day of that second month.
7. Figure 1 below shows the amount of the overpayment collected by Verizon’s proposed 1.5% late fee relative to the carrying costs the Company actually experiences. By Day 30 of that first month after the due date (*i.e.*, the month in which the late fee is first imposed), the late fee revenue in Figure 1 have reached \$45 while the cumulative carrying costs have reached only \$23.25. Verizon has collected nearly 200% of its carrying costs. If average bills are smaller, the ratio increases.²

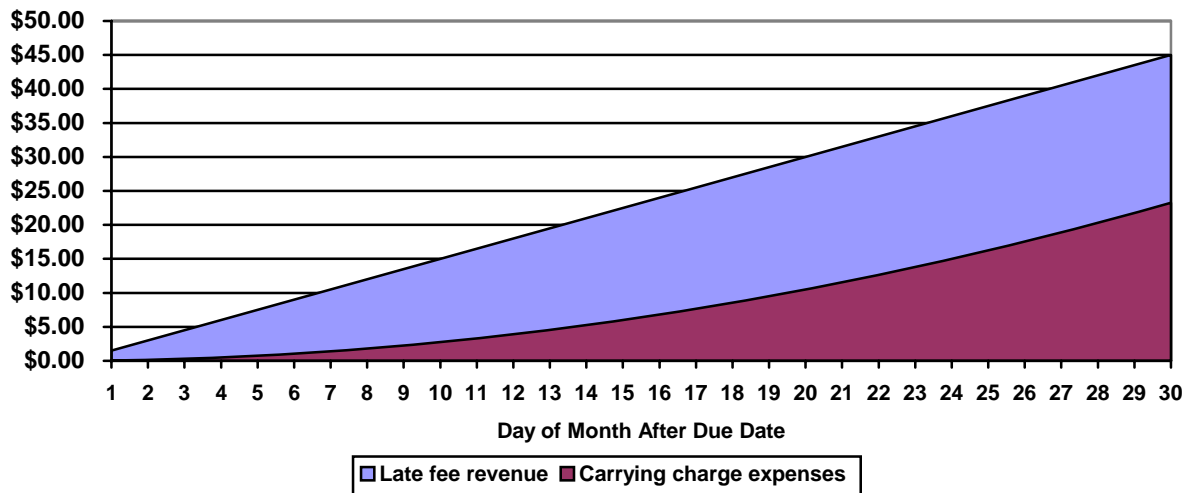


Figure 1: Cumulative Late Fee Relative to Actual Cumulative Carrying Costs

² With an average bill of \$40, for example, the Company collects 204% of its costs.

8. In fact, however, the mismatch is even greater than is shown in Figure 1. A much more typical payment pattern would find two-thirds of all accounts paying their bills in the first half of the month, with only one-third of the payments coming after the 15th. In this instance, the Verizon late fee would generate more than 225% of the costs that it purports to cover.
9. As can be seen, allowing Verizon to impose a late fee on residential customers is not needed to cover costs. Late fees would instead become a substantial profit center.
10. The final conceptual problem with Verizon seeking to justify charging a late fee to cover the carrying costs associated with delinquent payments involves the double compensation that Verizon will receive for these carrying costs. Double compensation occurs to the extent that Verizon were to collect the carrying costs first through its working capital adjustment and then again through a late payment charge.
11. Verizon continues to operate under a price cap in the Commonwealth of Massachusetts. Under that price cap, the Company's working capital requirement took into consideration the elapsed time between when Verizon incurred an expense in providing service and the time that Verizon was able to recover that expense through its receipts.³
12. The key element in calculating a working capital adjustment involves the lag days between the date of the expense and the date of payment. Thus if a utility pays wages on January 1st, renders a bill to the customer on January 20th, and receives payment on the due date of February 1st, there is a 31-day "lag." If the customer is ten days late --not making her payment until February 10th-- there is a 41-day lag.
13. To the extent that Verizon included the lag days associated with late payment in its calculation of working capital in setting its rate cap, it has received compensation for the carrying costs associated with arrears. If Verizon includes the lag days associated with delinquent payments in its working capital, therefore, it is not justified in again collecting carrying charges associated with those lag days through a late payment fee. To do so would allow Verizon to gain double compensation for its working capital requirement as well as to violate its rate cap requirements.
14. In sum, the Verizon late fee cannot be justified as a mechanism to compensate the Company for the carrying costs of late payment. Carrying costs do not begin on the "due date" of a Verizon bill. To impose a late fee beginning on the day after the due date, Verizon is allowed to double-dip. It is allowed to keep the benefits of residential customers paying early, and is allowed also to keep the late fee revenue generated from customers paying late. Moreover, the late fee bears no relationship to any carrying costs incurred by the Company. Assuming that an equal number of customers pay each day --an assumption that understates the promptness of

³ The lag days, of course, must be set-off by expenses that involve lead days. These expenses are collected before they must be paid. Property and sales taxes involve typical expenses creating lead days.

payment-- the proposed Verizon late fee generates roughly 200% of the carrying costs incurred by the Company (assuming that the embedded cost of capital is 1.5% per month).

Seeking to justify the proposed late payment fee as a means to compensate Verizon for its cost of collections activity is unreasonable.

15. One purpose that Verizon's late payment charge proposed late payment charge might arguably serve would be to compensate the Company for expenses associated with delinquent payments. To the extent that Verizon experiences prudently incurred out-of-pocket collection expenses, it is entitled to compensation for those expenses. This is not to say, however, that Verizon is entitled to compensation for these expenses through a late payment fee.
16. Late payments by Verizon customers can create out-of-pocket expenses for the Company. These expenses might include, for example, the postage associated with delivering reminder notices or shutoff notices, the costs of telephone calls to make "personal contact" prior to a shutoff, and the cost of fuel used in making a premise visit to disconnect service. The overall presence of collection expenses, however, does not justify the approval of Verizon's proposed late payment fee.
17. Late payment fees are inappropriate when the late payment fee is designed to compensate for out-of-pocket expenses that Verizon has not yet incurred. If late payment charges are intended to compensate Verizon for its out-of-pocket collection expenses, the imposition of such a charge must be triggered by some event that also triggers the incurrence of the expenses. This principle is violated by Verizon's proposal to prematurely levy a late payment charge on its residential customers.
18. In its request for permission to impose a late fee, Verizon sets a past due date of "30 calendar days from the date of receipt of the bill." The Company's February 3, 2006 letter to the DTE goes on to state: "If payment is not received by the customer's next billing date, the customer will be subject to a late payment charge of 1.5%."
19. The company's proposal provides for the imposition of a late payment fee even though no utility collection activity occurs at the time the late fee is imposed. The Company's own filing reports that "at the end of 2005, approximately 85% of Verizon MA's residence customers bills were paid on or before the due date. Approximately 10% of Verizon MA's residence customer bills were paid one month late, and 5% were paid two or more months late." According to the Company's own data, in other words, two-thirds of the residential bills that do become overdue are paid within one month without any collection activity being directed toward them.

20. Consider the time line laid out by Verizon in its February 3, 2006 letter to the DTE. A residential customer receives a bill in March 2006. If the customer has not paid the bill in full by his or her April bill, a late fee would be imposed on the May 2006 bill.
21. This last realization --that payments must be overdue by some time before the utility begins its collection process and thus before the utility begins to incur expenses --is particularly important to ensure that households who pay late, but who do not have collection activities directed against them, do not have unnecessary costs imposed upon them. Such unnecessary fees are imposed if a late payment fee is imposed on the day after the due date, failing to recognize that collection activity is not initiated until some later date.
22. The collection of a late payment charge designed to compensate the utility for out-of-pocket collection expenses should be limited, as well, by the prudence of the utility in incurring the expenses. If the utility's collection expense is imprudent, the company should not be permitted to pass on that expense through late charges. A collection expense might fail the test of prudence if it is known to be unnecessary, excessive or counterproductive.
- a. **Unnecessary:** A collection cost is unnecessary if the utility has a reasonable belief that the arrears will be paid even without the collection activities. This situation would arise, for example, if the delinquent payer were routinely late because of a mismatch between the date of receiving the bill and the date of receiving some type of public assistance. In these circumstances, the late payment is due to a recurring, but nonetheless temporary, lack of cash flow. If the utility has a history of receiving prompt customer payment when household funds do indeed become available, to initiate the collection process each month serves no function. This is precisely the case with Verizon. The Company's own figures report that while 85% of residential bills are paid by the due date, 95% of its residential bills are paid before the *next* due date. In this situation, Verizon is not justified in initiating its collection process based on a bill that the Company reasonably expects to be paid in any event. Even more importantly, Verizon should not be permitted to impose a late charge to gain compensation for incurring unnecessary collection expenses.
- b. **Excessive:** A utility's collection expense is excessive in those instances where the utility spends more on the process of collection than the outstanding arrears. Unfortunately, this happens in many cases. Assume that an average telephone bill that is one month in arrears averages roughly \$60. Few, if any, collection activities can be cost-justified for an arrears of \$60. Verizon, as any other utility, is not entitled to charge its customers for excessive or unreasonable expenses. This dictate holds true for late payment fees as well as for other rates and charges.

- c. **Counterproductive:** Finally, Verizon's collection expense is counterproductive when the Company is further from full payment after the collection process than before it. Particularly in situations involving low-income households, this will often be the case.⁴ In these situations, even when the collection process obtains some payment toward the arrears, and assuming that the full cost of collection can be charged to the delinquent payer through a late fee, if the nonpayer is incapable of paying her bill in full, the utility ends up worse off having undertaken the collection efforts than having not.
23. One distinguishing attribute of a low-income household is the fact of the limited *corpus* available to pay month-to-month utility bills. Directing collection efforts at the low-income household, and charging a late fee to get paid for such efforts, does not serve the best interests of all customers. The result is simply to divert limited funds away from the low-income customer's ability to pay his or her current bill and to the payment of late fees instead. This may increase Verizon's bottom line, but it does not serve a collection function.
24. The conclusion that imposing a late fee is likely to be a losing proposition does not depend for its efficacy on an assumption of nonpayment or partial payment. Even in those instances where the customer makes full payment of the outstanding arrears, the utility cannot be found *ipso facto* to have benefited from the late payment charge. So long as the late paying household has a limited *corpus*,⁵ if some part of the household's ability-to-pay is diverted to paying late payment charges, there is that less left to pay current bills. Verizon should not be permitted to engage in a collection process that is counterproductive. A process is counterproductive if it leaves the company farther from collecting the outstanding arrears after the collection process than before it.
25. In sum, Verizon should not be permitted to collect a late charge if the underlying process of collection was unnecessary, imprudent or counter-productive. If the collection process is such that it performs no function, or actually results in leaving Verizon worse off than had it not been performed, the expenses associated with the process should not be charged to ratepayers in any fashion, including through late payment charges.

Seeking to justify the proposed late payment fee as an "incentive to pay" is unreasonable.

26. According to the Company's February 3, 2006 letter to the DTE, Verizon seeks to justify its proposed late payment charge not as a means to gain compensation for expenses, but rather as a means to induce prompt payments on the part of customers. Since this rationale has been proffered, two inquiries should be pursued:

⁴ A discussion of income constraints is presented below.

⁵ Again, a discussion of income constraints is presented below.

- Are utility late payment charges an effective inducement in the prevention of nonpayment; and
- Does the particular *level* of the proposed late payment charge bear any relation to an acceleration in payment dates.

Moreover, it is a legitimate inquiry as to whether a late payment charge designed to induce prompt payment is rational in those instances where nonpayment occurs in households who are unable to pay either because of chronic poverty or because of a mismatch between their receipt of utility bills and public benefits checks.

A. Relationship to Inducement.

27. If Verizon's late payment charge *is* designed to create an inducement to pay, it should be capped at a level equal to the interest rate imposed by the Internal Revenue Service for delinquent taxes.⁶ This IRS rate is one of the few readily ascertainable rates that exist whose purpose is to serve this "inducement" function. As the courts have noted in calculating this IRS interest rate: "the (tax collector) has determined that its rate of interest must be high enough to deter tax evasion, restrict creative tax avoidance and compel timely payments."⁷
28. The tax rate should serve as a cap because of the added collection advantage enjoyed by public utilities. Low-income customers, for example, often indicate that the fear of evictions and utility service terminations often unto themselves make the payment of rent and utility bills top priorities when allocating scarce household resources. The relevant inquiry involves, therefore, determining what *additional* inducement a late fee creates that does not already exist through these collection mechanisms.

B. Impact on Low-Income Households that Cannot Afford to Pay.

29. The rationale of imposing a late payment charge at all as an inducement for low-income households to make prompt payments on their utility bills can be called into question. This purpose is not served when the reason for nonpayment is a chronic shortfall between household resources and household expenses.
30. That low-income households do not have sufficient funds to pay all household bills can not be seriously questioned. Fisher, Sheehan & Colton (FSC) did an assessment of the affordability of home telephone service for the National Association of State Utility Consumer Advocates (NASUCA) for Federal Communications Commission (FCC) Docket No. WC-03-109 (regarding telephone lifeline service). While the data FSC examined did not include information specific to Massachusetts, there is no reason to believe that Massachusetts would yield different results.

⁶ 26 U.S.C. §6621 (2006).

⁷ *In Re. Fisher*, 29 Bankr. 542, 545 (Bankr. Kan. 1983).

31. Households with incomes below 150% of the Federal Poverty Level lack sufficient resources for their telephone service to be affordable. As a result, the nonpayment or late payment of bills within this population is because these households cannot pay rather than because these households will not pay. Accordingly, a late payment fee is counter-productive as an incentive to make prompt payments.
32. An assessment of whether households with income at 150% of the Federal Poverty Level have sufficient resources to have affordable telephone service must first define what is meant by “affordable” service. In its May 7, 1997 order on Universal Service, the Federal Communications Commission (FCC) defined the concept of “affordability” to include both an “absolute” component (“to have enough or the means for”) and a “relative” component (“to bear the cost of without serious detriment”).⁸ According to the FCC, “both the absolute and relative components must be considered in making the affordability determination required under the statute.”
33. For telephone service to be *not* affordable, in other words, a household need not lack telephone service altogether (a failure of the absolute aspect) if to retain service would impose “serious detriment” on the household (the relative aspect). The comments below are based on this FCC definition of “affordability.”
34. Given this FCC definition, extending Lifeline telephone benefits to households with income at or below 150% of the Federal Poverty Level will assist households that have insufficient resources to obtain affordable telephone service. Using the Family Resource Simulator developed by the National Center for Children in Poverty, at the Columbia University School of Public Health, FSC tracked the resources and expenses for families of various sizes and composition:⁹
 - Two-person family, consisting of one adult and one child (age 4);
 - Three-person family, consisting of two adults and one child (age 4);
 - Three-person family, consisting of one adult and two children (ages 4 and 12).
35. To test whether geographic location makes a difference in the results, either between states or within a state, these comments present data for one large community and one smaller community in each of three states. The areas for which data is presented are identified in the Table below:

⁸ In the Matter of Federal-State Joint Board on Universal Service, FCC Docket NO. 96-45, FCC 97-157 (May 7, 1997), at paragraphs 109, et seq.

⁹ In the discussion that follows, unless otherwise specifically noted, a “family” and a “household” are not distinguished in a technical sense.

Communities for Which Family Resource Simulations Developed

		Location	
State	Pennsylvania	Philadelphia	Reading
	Georgia	Atlanta	Columbus
	Connecticut	Hartford	Waterbury

36. The Family Resource Simulator tracks total household resources and expenses as income increases for the household. As total income increases, for example, earned income must become a larger proportion of total household resources since the amount of Food Stamps decreases. A 2-person family, for example, loses eligibility for public health insurance for parents when earned income reaches about \$7,000. That household loses eligibility for Food Stamps with earned income of roughly \$16,000. For Resources after Expenses (R/A/E) to remain constant, earned income must increase sufficiently to offset this loss of public assistance.
37. A comparison of total resources with total expenses, which allows a computation of Resources After Expenses (R/A/E), is presented in the following table for the six communities.¹⁰
38. As can be seen in this table, out of the 18 potential scenarios, a Lifeline program would deliver affordability benefits to households up to 150% of the Federal Poverty Level in all 18 instances. In all 18 scenarios for which data is presented, households with annual income at or below 150% of the FPL¹¹ have negative resources after taking into account basic household expenses.¹²

¹⁰ These calculations are based on a number of user-provided inputs. The inputs included in this analysis include the following: in a two-parent family, the second parent works part-time. The first parent in each household (including one parent households) works fulltime. No household has assets that would disqualify it from receipt of any public benefit. Households receive Food Stamps, Children's Health Insurance, and the Earned Income Tax Credit, but not child cares subsidies, housing assistance, or Temporary Aid to Needy Families (TANF). Households use the least expensive available child care type. Households do not have access to employer-provided health insurance.

¹¹ Non-cash benefits (such as Food Stamps), of course, do not count as "income" toward a determination of income as a percentage of the Federal Poverty Level.

¹² The family expenses are calculated using several key inputs provided within the Resource Simulator. The cost of a private non-group plan is calculated assuming a \$500 deductible, 20% coinsurance, and \$20-\$25 co-payments. Quotes for such insurance are those collected by Columbia University. Note that estimates include the cost of insurance premiums only, not co-payments or other out-of-pocket expenses. Housing expense estimates are based on the Fair Market Rent (FMR; includes cost of rent and utilities) determined by the U.S. Department of Housing & Urban Development. The Simulator assumes a 2-bedroom unit for families with 1 or 2 children. Food estimates are based on the Low Cost Food Plan developed by the U.S. Department of Agriculture. Transportation cost estimates vary by the family's place of residence. In most cases, the Simulator assumes that parents commute to work by car, and the cost is estimated based on the Basic Family Budget methodology developed by the Economic Policy Institute (EPI). The "other necessities" portion of the family budget relies on data from the Consumer Expenditure Survey on the share of a family's budget they spend on items such as

Resources* After Expenses (R/A/E): 150% Federal Poverty Level
Six Communities (August 2004)**

Community	One Adult/One Child			One Adult/Two Children			Two Adults/One Child		
	Resources	Expenses	R/A/E	Resources	Expenses	R/A/E	Resources	Expenses	R/A/E
Philadelphia (PA)	\$17,173	\$28,271	(\$11,098)	\$22,457	\$35,940	(\$13,482)	\$21,173	\$31,811	(\$10,638)
Reading (PA)	\$17,803	\$23,077	(\$5,274)	\$23,262	\$29,393	(\$6,131)	\$21,978	\$26,136	(\$4,158)
Hartford (CT)	\$19,013	\$23,981	(\$4,968)	\$23,354	\$29,103	(\$5,749)	\$22,391	\$24,206	(\$1,815)
Waterbury (CT)	\$19,013	\$24,374	(\$5,361)	\$23,354	\$29,497	(\$6,143)	\$22,391	\$24,572	(\$2,180)
Atlanta (GA)	\$18,157	\$23,538	(\$7,201)	\$23,032	\$29,663	(\$6,631)	\$22,030	\$29,369	(\$7,339)
Columbus (GA)	\$18,157	\$19,453	(\$1,296)	\$23,032	\$23,758	(\$725)	\$22,030	\$23,229	(\$1,199)

*Resources include post-tax earnings, plus the Earned Income Tax Credit, plus public benefits (e.g., TANF, Food Stamps, Child Care Credit, housing subsidy, health insurance subsidy).

**Poverty Level calculated on pre-tax earnings. 150% of Federal Poverty Level for a household of two persons (\$18,180) has been rounded to \$18,000 for this analysis. 150% of Federal Poverty Level for a household of three persons (\$22,890) has been rounded to \$23,000.

39. The necessary conclusion from this data is that local telephone service is not affordable to households with income at or below 150% of the Federal Poverty Level. Even if these households do not go without telephone service altogether, these households have insufficient resources to maintain telephone service without substantial detriment to household finances. For these households to have telephone service, they would be required to give up some basic household necessity.
40. Using a late payment charge is effective when nonpayment occurs as a money management technique. Clearly, however, low-income households do not withhold payments toward their utility bills in order to gain a higher return by devoting their resources to alternative uses. Low-income households do not pay because they cannot afford to pay. Increasing their bill will thus provide no inducement to make prompter payments.
41. Indeed, most utilities have found that they receive more timely payments, and more frequent payments, by reducing bills to affordable levels rather than by increasing bills as a penalty for late payments. With telecommunications service in particular, the staff of the FCC reported in Docket WC-03-109 that expansion of the federal telephone Lifeline program would be an important step toward making local

telephone, apparel, personal items, and other necessities. Annual costs for other necessities equals 31% of both annual housing costs and annual food costs combined. EPI, which developed the methodology, provides the following example using Baltimore (MD): For a one-parent, two-child family in Baltimore in 1999, housing costs are \$7,536 a year and food costs are \$4,200 a year. Thus, other necessities costs are: $(\$7,536 + \$4,200) * 0.31 = \$3,638$.

telephone service more affordable and in helping low-income households retain service. Rather than imposing late payment fees as an “incentive” to pay, Verizon would be better served by promoting enrollment in the Lifeline telephone assistance program.

42. The late fee proposal of Verizon flies in the face of this learning. Seeking to create an incentive to make prompt payments by making unaffordable bills even higher is not only ineffective, but also ultimately counterproductive. If nonpaying households do not pay because they cannot pay, it is no remedy to impose penalties that increase the bill even further.

Seeking to justify the proposed late payment fee through comparisons to the late charges of other commercial businesses is unreasonable.

43. Verizon seeks to justify its proposed late payment fee by arguing that its fee of 1.5% per month is analogous to other commercial late charges. The Verizon proposal cannot be justified on this basis. The purpose of a utility late payment charge is to compensate the utility for the carrying cost and collection expenses incurred by reason of carrying a bill for some time past its "due date." No other cost component is appropriate for inclusion in a late payment charge in this sense.
44. Given the limited function of a late payment, it is important to recognize that a late payment fee is *not* the equivalent of interest charged in consumer credit transactions or late fees imposed in other commercial settings. As a result, to borrow interest rates from the commercial sector would result in Verizon late payment charges including inappropriate cost components.
45. An inquiry into what cost components are appropriate inputs into an interest rate (or late payment fee) is not an unusual regulatory or judicial inquiry. Consider, for example, judicial inquiries into what interest rates can appropriately serve as the discount factor in Chapter 11 "cramdown" cases.¹³ Like with utility late payment fees, the interest rate in a cramdown case has a limited purpose. The purpose of the cramdown interest rate is limited simply to compensating the lender for getting future payments instead of current payments.¹⁴
46. As a result of this limited purpose, the bankruptcy courts have held that several of the factors inherent in the old contract are inappropriate in setting the discount rate. The Tennessee court noted, for example, that it "is not aiming to produce a lender's profit but only to protect the creditor from loss caused by its being paid over a period of

¹³ 11 U.S.C. §1129(b) (2006).

¹⁴ The discount rate is that factor that "when utilized to determine deferred payments, places a party in 'as good a position' as if it had received its claim now, rather than later." *In Re. Fi-Hi Pizza*, 40 Bankr. 258, 262 (Bankr. Mass. 1984).

time."¹⁵ So, too, did the Texas court find that "* * *contract interest rates are determined by many factors other than simply the time value of money, including* * *overhead costs."¹⁶ The Kansas court found that the contract rate would inappropriately include depreciation and collection costs.¹⁷

47. At first blush, the comparison of Verizon's proposed late fee to interest rates in cramdown proceedings may not be intuitively obvious. Nonetheless, there are important lessons to learn. Just as the cramdown interest rate has a limited purpose, so, too, does the Verizon late fee have a limited purpose. Accordingly, just as the courts must ensure that inappropriate cost components are not included in the cramdown interest rate, so, too, should the DTE ensure that inappropriate cost components are not included in the late fee.
48. Interest rates "borrowed" from other industries include cost elements inappropriate for a Verizon late payment charge. While, for example, those interest rates are designed to generate a profit, Verizon's rate of return is already included in the bill subject to collection. While an interest rate will include a component for uncollectibles, Verizon's uncollectibles are already included in the bill subject to collection. While an interest rate will include a component for overhead, Verizon's overhead is already included in the bill subject to collection.
49. In short, just as the courts are willing to address the appropriate discount rate to be applied in Chapter 11 bankruptcy proceedings to determine whether those rates include only the components permitted by statute,¹⁸ so, too, should the DTE be willing to address the appropriate late payment charge to ensure that only Verizon's carrying costs (and prudent collection expenses) associated with the delinquent payment are included.
50. Even setting aside the cost components that comprise Verizon's proposed late payment fee, the comparison of Verizon's proposed late fee to other commercially available late payment charges reveals the unreasonableness of the Company's proposal. Consider, for example, interest rates charged on credit card debt. Credit card interest rates over the past six years document the unreasonableness of Verizon's proposed late payment fee.
51. The table below documents credit card interest rates from the first quarter of 1999 through the fourth quarter of 2005 as reported by the Federal Reserve Board.¹⁹ As can be seen, while an 18% late fee might have been considered somewhat high, but perhaps "competitive," relative to credit card interest rates throughout the two-year period 1999 through 2000, beginning in 2001, credit card interest rates began a sharp

¹⁵ *In Re. Fi-Hi Pizza*, 40 Bankr. 258, 269 - 270 (Bankr. Mass. 1984).

¹⁶ *In Re. Johnson*, 8 Bankr. 503, 505 (Bankr. Texas 1981).

¹⁷ *Fisher*, 29 Bankr. at 544, 545 - 46.

¹⁸ *See e.g., Fisher*, 29 Bankr. at 545.

¹⁹ First quarter 2006 rates have not yet been released.

decline. Since the middle of 2003, credit card interest rates have stayed constant at roughly 12.5%.

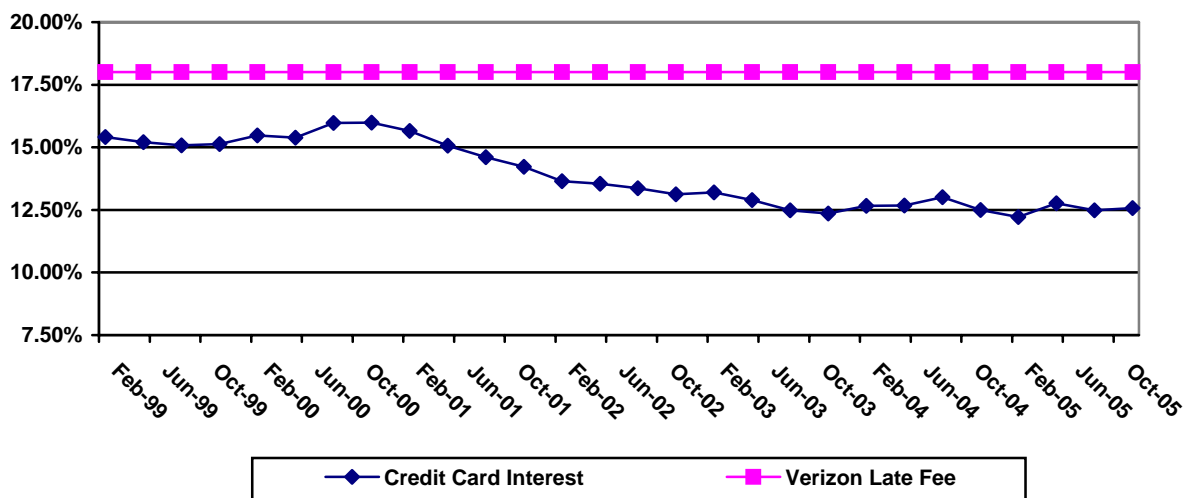


Figure 2: Verizon Late Fee vs. Interest Rates--All Credit Cards (FRB Release G19)

52. This level of credit card interest rates is important in that, as discussed above, credit card interest rates have cost components in them that are inappropriate to be included in a Verizon late payment fee. They would include a profit, which would be inappropriate for inclusion by Verizon. They would include overhead, which would be inappropriate for inclusion by Verizon. They would include bad debt, which would be inappropriate for inclusion by Verizon. Despite the fact that the credit card interest rates have costs that would need to be excluded from a Verizon late fee, those interest rates are substantially lower than Verizon's proposed late fee. As a result, Verizon's late fee should be rejected as unreasonable.

CONCLUSION AND RECOMMENDATIONS

WHEREFORE, based on the above-stated information and analysis, Action for Boston Community Development, Inc. (ABCD) prays that the Department of Telecommunications and Energy provide the following relief with respect to the proposed Verizon late payment fee:

1. The Department of Telecommunications and Energy (DTE) should reject the proposed Verizon late fee in its entirety.
2. In the alternative, and not in derogation of the action recommended immediately above, should the DTE decide to approve a late payment fee for Verizon, the DTE should:

- a. Set the Verizon late payment fee at the Internal Revenue Service interest rate as described above;
 - b. Should require that the late payment fee not be imposed until an account is past due 60-days; and
 - c. Should establish a minimum arrears of \$150 at which to impose a late payment fee.
 - d. Should exempt low-income customers from payment of a late payment fee, “low-income” to be defined by participation in the Telephone Lifeline program, the Low-Income Home Energy Assistance Program (LIHEAP), and other relevant public assistance programs; and
 - e. Should exempt not merely arrears subject to approved deferred payment plans from payment of the late payment fee, but also any arrears subject to non-collection attributable to any regulatory process or regulation.
3. Grant such other and further relief as may seem just in the premises.

Respectfully submitted,

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